



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON DC 20460

JUN 15 2007

OFFICE OF
INSPECTOR GENERAL

ENVIRONMENTAL
PROTECTION AGENCY

JUN 19 2007

MONTANA OFFICE

MEMORANDUM

SUBJECT: Hotline Complaint 2007-527

FROM: Eileen McMahon *Nancy E. Long*
Assistant Inspector General
Office of Congressional and Public Liaison

TO: John Wardell
Director
USEPA Region 8

The Office of Inspector General (OIG) received the enclosed hotline complaint requesting information on how the citizens of Libby can get EPA personnel to work with them in an ethical and honest manner. This is not a matter the OIG will address. We have advised Mr. Orr that his request has been referred to your office.

With this referral we are closing our file.

If you have any questions, please contact Cheryl Campbell at 202-566-2391.

Enclosure

cc: Hotline 2007-527

Bill *6/19/07*
This should
be sent to
you.
John

Kathie
Fyl.
B. M.

2007-527

Office of Congressional and Public Liaison

6-7-07

Dear Sir or Madam;

I am enclosing information to alert you to an abusive trend I have noticed in the Superfund project at Libby, Montana. I would like to lodge a formal complaint in an effort to put an end to this abuse. The people affected by EPA's actions in Libby deserve answers when they ask questions.

Recently, Senator Baucus was successful in getting answers to questions concerned citizens had been asking for years.

Gordon Sullivan, our Technical Advisor, had asked why a risk assessment had not been initiated. He asked this question repeatedly over the course of several years. He never received an answer. EPA officials stonewalled him.

Clinton Maynard asked why the "Living with Vermiculite" brochure had been put out by EPA when it was obviously flawed in a manner harmful to human health. He never received an answer. He eventually became frustrated enough to demand its removal. He was ignored.

Senator Baucus saw the importance of these questions. The lack of a risk assessment has allowed EPA to proceed under emergency protocols in Libby which are not backed by science and are not protective of human health. The "Living with Vermiculite" brochure was misleading in the same fashion, it actually used language similar to the statements Grace officials are facing indictments over. It encouraged people to handle vermiculite without proper training.

EPA officials have adopted a strategy of lying, stonewalling, and intimidating in Libby that exposes their lack of concern for the safety of the people who live here.

Recently I was involved in a situation with Mr. Mike Cirian which epitomizes the results of this disregard for ethics in EPA.

You will see in the enclosed letters that EPA contractors destroyed the septic tank at a home they were "restoring". In the first letter, I report the results of my inspection of the tank and counsel the owners with respects to protecting their interests. There were three areas of concern, the baffles had been destroyed, the tank was full of dirt and debris, and contamination remaining onsite would complicate any further work.

Mike Cirian's response on May 16 was typical of EPA lies and misdirection in these matters. He takes a stance on the baffles that denies the evidence that they were ripped off by the collapse of the lid. He then offers to replace the lid without mention of the debris or the remaining contamination. His statement that "Replacing the lid and backfilling around it will restore the septic tank system to its previous condition" is a deliberate falsehood, a lie.

It is my understanding that "deliberate misrepresentation, falsification, concealment, or withholding of a material fact" is an actionable offense under EPA rules of ethics and codes of conduct. When Mr. Cirian concealed and withheld the problems associated with the debris and remaining contamination, he attempted to harm these folks by deception. His actions were unethical and dishonest, actions that are far too common in Libby's EPA representatives, actions that bring discredit to all that EPA is doing in Libby.

One of the homeowners, a young woman, responded that his offer was unacceptable because it didn't take her concerns into account. While I didn't witness Mr. Cirian's outburst, I was told that he used abusive, threatening, and offensive gestures, language and conduct against her. She has filed her own complaint and we await the response from your office.

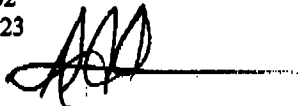
I don't think that is the proper way for EPA personnel to treat those they are here to "help". The use of hostile, forceful tactics instead of reason and respect will backfire on the EPA in Libby. Mr. Cirian attacking a young woman does nothing to enhance your reputation in this town. In fact, once the story hits the streets and bars it may be in his best interests, and EPA's, for him to leave town.

EPA has done a poor job of understanding the customs and culture of this town. Chivalry is not dead here, men don't take kindly to those who would abuse women.

Please let me know how we can get EPA personnel to deal with us in an ethical and honest manner. Specifically, I look forward to your response concerning how Mr. Cirian's actions meet EPA standards for public interaction.

Sincerely: DC Orr Phone 406-293-4702

PO Box 1212 Libby, MT 59923



X 2007-484

Notes on collapsed tank on Post Street.

Matt and Erin Fairchild:

I looked at your collapsed septic tank at 10 am on May 14, 2007 and have some ideas on your concerns to protect your interests in this matter. I am a septic system installer licensed by Lincoln County. (license #17). I have 30 years experience in these matters. I have collapsed tanks myself by running heavy equipment over them. I replaced every one.

No one disputes that the tank in question is old and in poor shape. The main question seems to be, would it have continued to serve its purpose if Environmental Response (ER) personnel hadn't run over the tank? My experience is that these tanks will continue to serve a viable purpose even if they are in poor shape. I have never seen one collapse without some additional weight on them, whether that be a truck, backhoe, pickup load of wood or a horse. I have even seen deck supports accidentally placed on a tank and cause a collapse, but never in thirty years have I seen one fall in on its own. JMF Services, the tank pumper concurs that the lid was probably held in place by the roots of a nearby tree. Those roots would only have gotten stronger with age. They appear to have been compromised by the excavation performed by ER.

You stated that ER did ask for information relating to the position of the septic system. This would seem to imply that they knew to be careful when digging in this area. Obviously, they did not stay off of the tank altogether. This puts the collapse squarely in their responsibility since they did not employ due diligence to safeguard the tank. As a contractor I know the pressure to put production ahead of due diligence, had they not collapsed the tank the profit margin would have been increased.

ER has contractual obligation to make you "whole". The way I understand it, their intentions at this point are to put a new lid on the tank and bury it with new topsoil. That would seem, to the layman, to be a satisfactory response but I see several problems with this approach.

First, it would appear that when the lid was pushed into the tank, it ripped the baffles off of both the inlet and outlet sides. These baffles are critical to the continuing service of the tank. Without the baffles, the solids that build up in the tank will continue downstream to the drainage system and cause it to fail prematurely. You should request that baffles be replaced, metal baffles attached to the tank, not an elbow added onto the existing pipe. This may prove difficult as it appears the side of the tank was ripped off with the inlet baffle as evidenced by the bare rock showing through to the inside. This rock shows no evidence of direct contamination, thus I conclude the side of the tank was ripped off with the baffle.

You must also address the volume of dirt and debris that now lies inside the tank. It is a very rough estimate, but with JMF saying it is a 500 gallon tank, and given the bury depth and amount of metal laying inside the tank, I would say the capacity of this tank has been reduced by 30%. This will also translate to additional stress on your drainage system. You should request that the dirt and debris be removed from the tank in order to have the capacity for biological action within the tank that you had before. Lincoln County has stringent rules in place for transport and disposal of this material pertaining to airborne pathogens, make sure that they adhere to these regulations so you aren't left with a bigger mess and potential health hazards.

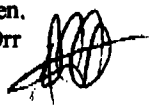
This dirt and debris displaced the contents of the tank upon collapse, this factor alone has already compromised the drainage system and that should be taken into account in any settlement. You should request a one year warranty on the drainage system based on the unknown damage displaced solids have done to the system.

You saw how Paul Lammers reacted when I said we would wait for their response in writing before proceeding. He was horribly reluctant to put anything in writing. You have every right to request that resolution of this matter be negotiated in writing and I would recommend that you do so. You should also request copies of the pictures they had this morning. It would be in your best interests to document everything you can since they have no intention of inspecting the drainage system.

Ultimately, maybe not for a decade or more but ultimately, this tank will have to be replaced. The vermiculite contamination that they left behind will pose a greater problem at that point than it does now. This is probably the greatest reason ER is reluctant to replace the tank they damaged. The contracting procedures put in place on this site translate into a license to steal. ER is making huge profits on this cleanup, replacing a damaged tank is a minor concern for a huge conglomerate like ER. The only reason I can see for their reluctance to replace the tank is the cost of dealing with the contamination they have left behind. You should address this before they try to have you sign a release.

I hope this helps you obtain a fair resolution of this matter. I have been appalled, given the tremendous sums of money involved, with the shoddy workmanship of the contractors EPA picks to work in Libby. I'm sorry you had to suffer the upset of having your property treated with such disrespect and will work hard with the CAG to see to it that these incidents are few and far between.

Sincerely, DC Orr



Matt and Erin Fairchild:

I am so sorry for your continuing problems with the cleanup of your home.

In reviewing the response generated by Mr. Mike Cirian I notice it is business as usual at the EPA.

Mr. Cirian makes no mention in his letter to the fact that the capacity of your existing tank has been diminished by the dirt and debris ER crews dumped in there. In order for you to be made "whole", you would have to have the same capacity in your tank for biological action to break down the effluent. Removal is necessary to restore your tank to its previous condition, something Mr. Cirian claims he will take full responsibility to do. Your tank operating at this diminished capacity will have detrimental effects on the drainage system. I thought I made that clear in my first letter.

Mr. Cirian is aware of this fact. I have been involved with the cleanup since its inception, I have watched EPA in their dealings with the public. Mr. Cirian may well claim he missed this point, an admission that he doesn't care enough about your home to read a simple letter.

I would argue that Mr. Cirian simply avoided this issue because it is inconvenient. Purposely avoiding the issue is dishonest and uncivil in my opinion. I have witnessed far too many of these shenanigans to trust Mr. Cirian with the truth.

Mr. Cirian also seems to want to take the position that the baffles had rusted off prior to ER crews jamming the lid past them. This is preposterous. Anyone with experience in these matters will tell you it is possible for the baffles to rust out, but the point where they are attached would be the last point to rust. Jerry Bennet from JMF told me the baffles are in the bottom of the tank, intact. An inspection of these baffles will show they were ripped from the side of the tank, not rusted off. In fact, you will find that the baffles ripped off part of the tank wall which is still attached to the baffle. When they remove the debris and dirt from your tank, request that they save the baffles for inspection so we can resolve this item of contention.

Since they started out sending Mr. Cirian to lie to you in an attempt to leave you with a large repair bill I think it in your best interest to have someone witness the removal of the debris. They could further damage your tank without proper oversight just out of spite. I would volunteer to be your witness. As a CAG member it is important that I see firsthand how EPA treats the people of our community so I can report it to the CAG.

Please let me know when they intend to remove the debris so I can schedule to be onsite.

Sincerely, DC Orr